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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/938,455	08/24/2001	Jessica Weiss Goldberg	J6709(C)	2226

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EXAMINER

BOYER, CHARLES I

ART UNIT	PAPER NUMBER
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1751

DATE MAILED: 03/30/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/938,455

Applicant(s)

GOLDBERG ET AL

Examiner

Charles I. Boyer

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1751

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 September 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 29,30,32,33,36-42 and 44-61 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 29, 30, 32, 33, 36-42, and 44-61 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

This action is responsive to applicants' amendment and response received September 7, 2004. Claims 29, 30, 32, 33, 36-42, and 44-61 are currently pending.

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 29, 30, 32, 33, 36-41, 44, 45, 51, 54, and 61 are rejected under 35 U.S.C. 102(b) as being anticipated by Chaussee, US 5,334,325.

Chaussee teaches post-foaming gels dispensed from a piston can (see abstract).

An example of such a composition comprises 22.5% phosphate ester anionic surfactant, 1.47% oleyl betaine, 0.5% ethoxylated alcohol, propylene glycol, cyclomethicone, 50% water, and a pentane/isobutane foaming agent (col. 9, example 7). With respect to specific properties such as viscosity and lamellar structure, as the composition of the reference contains the precise components in the precise concentrations of the present claims, the examiner maintains the composition will inherently exhibit these properties. Note that the ethoxylated

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alcohol set forth in example 7 satisfies the structural limitation set forth in the claims. As this reference meets all material limitations of the claims at hand, the reference is anticipatory.

Applicants have traversed this rejection on the grounds that the reference does not teach the structural presently claimed. The examiner disagrees and maintains the ethoxylated alcohol satisfies this limitation.

3. The rejection of claims 29, 30, 32, 33, 36, 38, 44, 45, 47-51, 54, and 61 under 35 U.S.C. 102(e) as being anticipated by Marchesi et al, US 6,682,726 is withdrawn in view of applicants' amendment and response.

4. Claims 29, 30, 32, 33, 36, 38-40, 44-50, 54, and 61 are rejected under 35 U.S.C. 102(b) as being anticipated by George et al, US 5,500,211.

George et al teach self-foaming shaving gels (see abstract). An example of such a composition comprises 7.5% myristoyl sarcosinate, 1% ethoxylated alcohol, myristyl alcohol, 4.5% mineral oil, hydroxyethyl cellulose, hydroxypropyl cellulose, polyquaternium-10, 74.5% water, and an isopentane/isobutane foaming agent wherein the composition is dispensed in a piston can (referred to in the example as a barrier-type aerosol container) (col. 5, example 4). With respect to specific properties such as viscosity and lamellar structure, as the composition of the reference contains the precise components in the precise concentrations of the present claims, the examiner maintains the composition will

inherently exhibit these properties. Note that both the ethoxylated alcohol and the myristyl alcohol set forth in example 4 satisfy the structurant limitation set forth in the claims. As this reference meets all material limitations of the claims at hand, the reference is anticipatory.

Applicants have traversed this rejection on the grounds that the reference does not teach the structurant presently claimed. The examiner disagrees and maintains the ethoxylated alcohol and myristyl alcohol satisfy this limitation.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 29, 30, 32, 33, 36, 38, 44, 45, 47-51, 54, and 61 are rejected under 35 U.S.C. 103(a) as being unpatentable over Marchesi et al, US 6,682,726.

Marchesi et al teach self-foaming shaving lotions (see abstract). An example of such a composition comprises 10.78% sarcosinate anionic surfactant, 0.53% carrageenan gum, glycerin, 78.57% water, and an isopentane/isobutane foaming agent wherein the composition is dispensed in a piston can (referred to in the example as bottom-gassed cans) (col. 5, example 8). Suitable additives of the invention include ethoxylated alcohols, fatty acid esters, and fatty alcohols (col. 2, lines 30-36 and col. 4, lines 44-51). Accordingly, it would have been obvious to one of ordinary skill in the art

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to incorporate any of these well-known additives in the composition of example 8, resulting in a structured composition.

1. Claims 29, 30, 32, 33, and 36-42, and 44-61 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sporri, US 5,127,556 in view of Dixon, US 6,407,044.

Sporri teaches piston can formulations (see abstract). Sporri teaches that piston cans are particularly well suited and in wide use for post-foaming shaving gel products (col. 1, lines 10-38). Sporri does not teach the specific post-foaming compositions of the present claims. Dixon teaches aerosol personal cleansing compositions (see abstract). An example of such a composition is a shower gel base comprising 4.73% sodium lauryl ether sulfate, 3% glycerin, 5.25% lauroamphoacetate, 2.43% palm kernel fatty acid, 0.4% cationic polymer, and the balance water wherein the base is dispensed in a pressurized mixer containing 85-97% base and 3-15% propellant (col. 15, example I). Another example comprises 5.13% sodium lauryl ether sulfate, 0.5% trihydroxystearin, 1.43% lauroamphoacetate, 0.3% cationic polymer, 5% petrolatum, 7.5% soybean oil, and the balance water wherein the base is dispensed in a pressurized mixer containing 85-97% base and 3-15% propellant (col. 15, example F). Note that the viscosity of these compositions may be as high as 100,000 cps (col. 11, lines 30-44). With respect to the present compositions being present in a lamellar phase, as fatty acids are well known in the art as lamellar structurants, the examiner maintains these examples will inherently exhibit this property.

It would have been obvious to one of ordinary skill in the art to package the composition of Dixon in a piston can and so meet the limitations of the claims at hand as Sporri teaches that piston cans are particularly well suited and in wide use for post-foaming shaving gel products.

Applicants have traversed this rejection on the grounds that Dixon does not exhibit the viscosity presently claimed, however, the examiner maintains that as the composition of Dixon contains the same components in the same proportions as those presently claimed, the composition of Dixon will inherently possess a viscosity within the presently claimed range. In the alternative, if the viscosity of Dixon does not inherently meet the viscosity presently claimed, note that the viscosity of the compositions of Dixon may be as high as 100,000 cps and so overlap the value presently claimed.

Conclusion

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charles I Boyer whose telephone number is 571 272 1311. The examiner can normally be reached on M-F 9:30 to 6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yogendra Gupta can be reached on 571 272 1316. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Charles I Boyer
Primary Examiner
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